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Before the
Federal Communications Commission
Washington, D.C. 20054

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In the Matter of)

Federal-State Joint Board on)
Universal Service)

CC Docket No. 96-45

**Reply Comments of
Telco Communications Group, Inc.**

Dana Frix
Pamela Arluk
SWIDLER & BERLIN, CHARTERED
3000 K Street, N.W., Suite 300
Washington, D.C. 20007
(202) 424-7500

Counsel for Telco Communications
Group, Inc.

Dated: January 10, 1997

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INTRODUCTION AND SUMMARY

Telco Communications Group, Inc. ("Telco"), by its undersigned counsel and pursuant to Public Notice, DA 96-1891 (released November 18, 1996), submits these Reply Comments on the Recommended Decision of the Joint Board issued in the above-captioned proceeding.¹

The Reply Comments that follow are limited to addressing issues raised by other parties' Comments that have a direct impact on Telco. In particular, Telco files these Reply Comments to respond to parties that disagree with Telco's two main points: (1) incumbent facilities-based local exchange carriers ("ILECs") must not be allowed to pass through their universal service contributions to resellers of local service; and (2) local resellers must be eligible to receive universal service subsidies if the universal service mechanism is to be competitively neutral.

¹*In the Matter of Federal-State Joint Board on Universal Service*, Recommended Decision of the Joint Board, CC Docket No. 96-45 (rel. Nov. 8, 1996) ("Recommended Decision").

I. ILECs Must Be Prohibited from Passing Through Their Universal Service Contributions to Carriers that Purchase Elements and Services Pursuant to Sections 251 and 252

Many parties advocated the use of retail revenues as the basis for carriers' contributions to the federal universal service fund. Although Telco agrees that federal universal service fund contributions should be assessed on a carriers' gross telecommunications revenues net of payments to other carriers, not retail revenues, Telco also advocates the adoption of a retail end user surcharge. A surcharge on the end user's bill makes universal service support explicit, as required by Section 254(e). If end users are required to subsidize low income subscribers and service to high-cost areas, schools, libraries and health care providers, a surcharge makes explicit the amount of support they are required to provide.

An explicit surcharge on end users' bills will also ensure that carriers do not attempt to recover their universal service assessment implicitly by increasing rates for unbundled network elements or resold local services. As the Federal Communications Commission ("FCC") has previously recognized, recovering universal service fund assessments in the rates charged for elements or local services (such as the resold local services that Telco and other carriers will purchase) under Sections 251 and 252 violates the nondiscriminatory contribution principles in Section 254:

If a state collects universal service funding in rates for elements and services pursuant to sections 251 and 252, it will be imposing non-cost based charges in those rates. Including non-cost based charges in the rates for interconnection and unbundled elements is inconsistent with our rules implementing sections 251 and 252 which require that these rates be cost-based. It is also inconsistent with the requirements of section 254(f) that telecommunications carriers contribute to state universal

service on a nondiscriminatory basis, because telecommunications carriers requesting interconnection or access to unbundled network elements will be required to make contributions to universal service support through such charges. States may not, therefore, include universal service support funding in the rates for elements and services pursuant to sections 251 and 252, nor may they implement funding mechanisms that have the same effect.²

Thus, in its Interconnection Order, the FCC concluded that funding for any universal service mechanism may not be included in the rates for elements and services under Sections 251 and 252.³ The Joint Board reached a similar conclusion.⁴ The FCC should reiterate the finding it made in the Interconnection Order and reject Pacific Telesis Group's ("PacTel") recommendation that purchasers of unbundled elements be charged for an ILEC's universal service assessment.⁵

²*In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, First Report and Order, FCC 96-325, ¶ 713 (rel. Aug. 8, 1996) ("Interconnection Order").

³Specifically, the FCC stated in the Interconnection Order that:

[w]e conclude funding for any universal service mechanisms adopted in the universal service proceeding may not be included in the rates for interconnection, network elements, and access to network elements that are arbitrated by the states under sections 251 and 252. Sections 254(d) and 254(e) of the 1996 Act mandate that universal service support be recovered in an equitable and nondiscriminatory manner from all providers of telecommunications services. We conclude that permitting states to include such costs in rates arbitrated under sections 251 and 252 would violate that requirement by requiring carriers to pay specified portions of such costs solely because they are purchasing services and elements under section 251.

Interconnection Order at ¶ 712 (footnotes omitted).

⁴The Joint Board recommended that the FCC clarify that under its Section 251 rules, ILECs are prohibited from incorporating universal service support into rates for unbundled network elements. Recommended Decision at ¶ 808.

⁵PacTel Comments at 27.

The 1996 Act⁶ requires universal service subsidies to be explicit and universal service contributions to be nondiscriminatory. An end user surcharge meets both criteria. The FCC should therefore adopt rules allowing carriers to pass through their universal service contributions to retail end users via an explicit surcharge on the end user's bill. The FCC should also adopt rules explicitly prohibiting carriers from passing through their universal service contributions to carriers that purchase elements or services, including resold local service, pursuant to Sections 251 and 252.

II. The FCC Should Explicitly State that Resale Carriers Are Eligible for Universal Service Support

A. Denying Local Resellers Universal Service Support Violates the Principle of Competitive Neutrality

As many parties pointed out, the key requirement in achieving competitive neutrality in universal service funding is to ensure that neither eligibility nor the level of funding depends on the identity of the carrier providing the service.⁷ In order to be competitively neutral, universal service support must be paid to whatever carrier is selected by the customer to provide local exchange service. The FCC already has rejected the argument that requiring carriers to own some local

⁶Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) ("1996 Act").

⁷Washington Utilities and Transportation Commission Comments at 3 (support levels should be carrier blind and customer specific); AT&T Comments at 2-3 (universal service subsidies must be fully portable and follow the customer, not the carrier); California Public Utilities Commission Comments at 12 (all carriers should be eligible to participate in the federal Lifeline program); Excel Telecommunications, Inc. ("Excel") Comments at 5 (any rule excluding local resellers from eligibility is a barrier to competition and harmful to consumers); MFS Communications Company, Inc. ("MFS") Comments at 16 (excluding resellers from class of eligible carriers violates the pro-competitive intent of the 1996 Act).

exchange facilities would promote competition in the local exchange market.⁸ The FCC should make a similar explicit finding in this docket and reject the recommendation of the Joint Board that “pure” resellers not be eligible to receive universal service support.⁹

B. A Facilities Ownership Restriction Is An Administrative Nightmare

The 1996 Act recognizes three coequal paths of entry into the local exchange market: resale, purchase of unbundled network elements, and construction of facilities. Carriers will often begin to provide service solely through resale, combining resale with network elements and their own facilities after they have established a foothold in a particular market. The three paths to entry are therefore more of a continuum than they are distinct, and are by no means mutually exclusive. There is no meaningful distinction between a non-facilities-based carrier and a carrier with a single piece of equipment in a market.¹⁰ Both the facilities test in general and the test proposed by Southwestern Bell,¹¹ which would require the facilities test to be applied on a customer-by-customer basis, would create an administrative nightmare for State Public Utilities Commissions (“PUCs”).

⁸Interconnection Order at ¶ 340.

⁹Recommended Decision at ¶ 161.

¹⁰Excel Comments at 9 (larger resale carriers with significant economic resources would be able to game any definition of “facilities”); Telecommunications Resellers Association (“TRA”) Comments at 14 (enforcement difficulties would mirror those the FCC acknowledged in rejecting a facilities requirement for acquiring unbundled network elements and a facilities ownership limitation would be so easy to meet it would ultimately be meaningless).

¹¹SBC Communications, Inc. (“SBC”) Comments at 21.

C. Carriers Offering Universal Service Solely Through Resale Do Not Receive the Benefit of Universal Service Support in the ILECs' Rates

Some parties assert that resellers are already receiving the benefit of below cost rates, arguing that universal service support is "inherent in the ILEC's retail rates" and/or resellers already receive a wholesale discount.¹² The existence of below cost rates is not *per se* evidence that such rates are subsidized by universal service. Below cost rates could be evidence of a carrier's competitive pricing decisions or evidence that a service that is subsidized by other services, for example, exchange access. In fact, one of the main goals of this proceeding is to identify, quantify and make explicit the amount of *universal service support* inherent in any retail price charged to consumers. Neither the pure reseller nor the carrier purchasing unbundled elements from the ILEC will receive the benefit of universal service support provided to the ILEC unless that support is accounted for in calculating the cost of the retail service or the network element.¹³ However, universal service support is not a "cost" associated with the provision of interconnection or a network element. Rather, universal service support is a subsidy that is limited to supporting the provision, maintenance

¹²ALLTEL Telephone Services Corporation ("ALLTEL") Comments at 5 (universal service support is already reflected in the price the reseller pays); SBC Comments at 22 (reseller gets a "twice discounted" rate -- a subsidized below-cost rate and wholesale discount); Sprint Corp. Comments at 21 (reseller is already getting the benefit of universal service payments inherent in the ILEC's retail rates); US West, Inc. ("US West") Comments at 12 (resellers will benefit from the lower charges that reflect universal service support).

¹³Although US West advocates including universal service support in a carrier's calculation of the cost of a facility (US West Comments at 12-13), Telco is not aware of any finding by the FCC or a State PUC that requires ILECs to do so. Telco also respectfully suggests that if the FCC were to adopt rules including universal service support in the price of a network element or facility, it could not be done in this docket consistent with due process.

and upgrading of the facilities and services *for which the support is intended*. Including universal service support in elements and services provided pursuant to Sections 251 and 252 violates Section 252's mandate that prices be based on cost and Section 254's mandate that universal service support be explicit. If universal service support is not included in the rates for elements or services under Sections 251 and 252, as it should not be, then resellers will not receive the benefit of universal service support unless such support is provided directly to the reseller.

For the foregoing reasons, the FCC should reject the Joint Board's recommendation and find that local resellers may qualify as carriers eligible to receive universal service support.

III. The FCC Should Carefully Weigh the Comments of Parties Before Implementing a No-Disconnect Rule

Many parties pointed to a lack of definitive evidence that a no-disconnect rule results in increased subscribership.¹⁴ Furthermore, ILECs, interexchange carriers ("IXCs"), and even State PUCs pointed out the danger that a no-disconnect rule will generate losses that all other bill paying customers will be forced to bear.¹⁵ Telco urges the FCC to weigh these arguments carefully before

¹⁴MCI Telecommunications Corporation ("MCI") Comments at 12; PacTel Comments at 32; United States Telephone Association ("USTA") Comments at 33; WorldCom Comments at 24.

¹⁵California Department of Consumer Affairs Comments at 42; MCI Comments at 12; PacTel Comments at 31.

adopting a no-disconnect rule for Lifeline-participating customers that elect voluntary toll limitation.¹⁶

IV. NECA As Presently Constituted Is Not Neutral and Therefore Should Not Be Made the Administrator of the Federal Universal Service Fund

While many parties agreed with the Joint Board's recommendation that the National Exchange Carrier Association ("NECA") is not neutral and therefore should not be appointed as the administrator, at least one party recommended that NECA be appointed as the fund administrator.¹⁷ Telco therefore reiterates its opposition to NECA's appointment as fund administrator. The FCC should adopt the Joint Board's criteria and select a neutral fund administrator through a competitive bidding process.

V. CONCLUSION

The FCC must adopt universal service rules that meet both the pro-competitive goals of the 1996 Act and the specific principles mandated in Section 254. To ensure that such rules do not discriminate against local resellers, the FCC should adopt rules that are consistent with the recommendations Telco has made in both its Comments and Reply Comments in this proceeding.

¹⁶Even if the FCC decides to adopt the no-disconnect rule for Lifeline participating subscribers, the FCC should not follow the Ohio Commission's lead and apply the no-disconnect rule to all customers of local service. Public Utilities Commission of Ohio Comments at 8-9.

¹⁷NYNEX Comments at 41-42 (NECA can be universal service fund administrator if it spins off its advocacy role); Wyoming Public Service Commission Comments at 14.

Most importantly, local resellers must be eligible to receive universal service support and ILECs must be prohibited from passing through their universal service assessments to carriers purchasing elements and services pursuant to Sections 251 and 252.

Respectfully submitted,



Dana Frix
Pamela Arluk
SWIDLER & BERLIN, CHARTERED
3000 K Street, N.W., Suite 300
Washington, D.C. 20007
(202) 424-7500

Counsel for Telco Communications
Group, Inc.

January 10, 1997

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of January, 1997, the foregoing Comments of Telco Communications Group, Inc. were served via hand delivery* or first-class mail, postage prepaid, on the following:

Office of the Secretary*(Orig. +4)
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Sheryl Todd*(copy +diskette)
Common Carrier Bureau
2100 M Street, N.W., Room 8611
Washington, D.C. 20554

International Transcription Service*
2100 M Street, N.W., Room 140
Washington, D.C. 20037

The Honorable Reed E. Hundt, Chairman*
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554

The Honorable Rachelle B. Chong*
Commissioner
Federal Communications Commission
1919 M Street, N. W., Room 844
Washington, D.C. 20554

The Honorable Susan Ness, Commissioner*
Federal Communications Commission
1919 M Street, N.W., Room 832
Washington, D.C. 20554

The Honorable Julia Johnson
Commissioner
Florida Public Service Commission
2540 Shumard Oak Blvd.
Gerald Gunter Building
Tallahassee, FL 32399-0850

The Honorable Kenneth McClure
Commissioner
Missouri Public Service Commission
310 W. High Street, Suite 530
Jefferson City, MO 65101

The Honorable Sharon L. Nelson
Chairman
Washington Utilities and Transportation
Commission
P.O. Box 47250
Olympia, WA 98504-7250

The Honorable Laska Shoenfelder
Commissioner
South Dakota Public Utilities Commission
State Capitol, 500 E. Capitol Street
Pierre, SD 57501-5070

Martha S. Hogerty
Public Counsel for the State of Missouri
P.O. Box 7800
Jefferson City, MO 65102

E. Pederson, State Staff Chair
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

Lisa Boehley
Federal Communications Commission
2100 M Street, N.W., Room 8605
Washington, D.C. 20554

Charles Bolle
South Dakota Public Utilities Commission
State Capitol, 500 E. Capitol Street
Pierre, SD 57501-5070

Deonne Bruning
Nebraska Public Service Commission
300 The Atrium
1200 N Street, P.O. Box 94927
Lincoln, NE 68509-4927

James Casserly
Federal Communications Commission
Office of the Commissioner Ness
1919 M Street, Room 832
Washington, D.C. 20554

John Clark
Federal Communications Commission
2100 M Street, N.W., Room 8619
Washington, D.C. 20554

Bryan Clopton
Federal Communications Commission
2100 M Street, N.W., Room 8615
Washington, D.C. 20554

Irene Flannery
Federal Communications Commission
2100 M Street, N.W., Room 8922
Washington, D.C. 20554

Daniel Gonzalez
Federal Communications Commission
Office of Commissioner Chong
1919 M Street, N.W., Room 844
Washington, D.C. 20554

Emily Hoffnar
Federal Communications Commission
2100 M Street, N.W., Room 8623
Washington, D.C. 20554

L. Charles Keller
Federal Communications Commission
2100 M Street, N.W., Room 8918
Washington, D.C. 20554

Lori Kenyon
Alaska Public Utilities Commission
1016 West Sixth Avenue, Suite 400
Anchorage, AK 99501

David Krech
Federal Communications Commission
2025 M Street, N.W., Room 7130
Washington, D.C. 20554

Debra M. Kriete
Pennsylvania Public Utilities Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Diane Law
Federal Communications Commission
2100 M Street, N.W., Room 8920
Washington, D.C. 20554

Mark Long
Florida Public Service Commission
2540 Shumard Oak Blvd.
Gerald Gunter Building
Tallahassee, FL 32399

Robert Loube
Federal Communications Commission
2100 M Street, N.W., Room 8914
Washington, D.C. 20554

Samuel Loudenslager
Arkansas Public Service Commission
P.O. Box 400
Little Rock, AR 72203-0400

Sandra Makeeff
Iowa Utilities Board
Lucas State Office Building
Des Moines, IA 50319

Philip F. McClelland
Pennsylvania Office of Consumer
Advocate
1425 Strawberry Square
Harrisburg, PA 17120

Michael A. McRae
D.C. Office of the People's Counsel
1133 15th Street, N.W., Suite 500
Washington, D.C. 20005

Tejal Mehta
Federal Communications Commission
2100 M Street, N.W., Room 8625
Washington, D.C. 20554

Terry Monroe
New York Public Service Commission
3 Empire Plaza
Albany, NY 12223

John Morabito
Deputy Division Chief, Accounting
and Audits
Federal Communications Commission
2000 L Street, N.W., Suite 812
Washington, D.C. 20554

Mark Nadel
Federal Communications Commission
2100 M Street, N.W. Room 8916
Washington, D.C. 20554

John Nakahata
Federal Communications Commission
Office of the Chairman
1919 M Street, N.W., Room 814
Washington, D.C. 20554
Lee Palagyi
Washington Utilities and Transportation
Commission
1300 South Evergreen Park Drive, S.W.
Olympia, WA 98504

Kimberly Parker
Federal Communications Commission
2100 M Street, N.W., Room 8609
Washington, D.C. 20554

Barry Payne
Indiana Office of the Consumer Counsel
100 North Senate Avenue, Room N501
Indianapolis, IN 46204-2208

Jeanine Poltronieri
Federal Communications Commission
2100 M Street, N.W., Room 8924
Washington, D.C. 20554

James Bradford Ramsay
National Association of Regulatory Utility
Commissioners
P.O. Box 684
Washington, D.C. 20004-0684

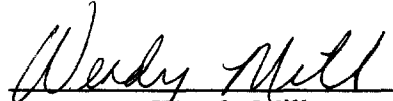
Brian Roberts
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Gary Seigel
Federal Communications Commission
2000 L Street, N.W., Suite 812
Washington, D.C. 20554

Richard Smith
Federal Communications Commission
2100 M Street, N.W., Room 8605
Washington, D.C. 20554

Pamela Szymczak
Federal Communications Commission
2100 M Street, N.W., Room 8912
Washington, D.C. 20554

Lori Wright
Federal Communications Commission
2100 M Street, N.W., Room 8603
Washington, D.C. 20554


Wendy Mills